

Impact of AB 1389 Trailer Bill on Redevelopment

Fiscal Reporting Requirements for AB 1290 Pass-Through Entitlement

Background

In May 2008, the California State Controller issued a detailed report titled *Distribution and Reporting of Local Property Tax Revenue, Phase II*, which raised serious concerns regarding redevelopment agencies (RDAs), school districts and community college districts underreporting incremental tax revenues. The review, authorized by the 2007-08 State Budget Act, identified concerns that the state's backfill obligation to local schools had not declined relative to the growth of property taxes prior to 2007. The review disclosed that many RDAs throughout California had failed to make the correct AB 1290 pass-through payments to affected taxing entities, including school districts, county offices of education and community college districts. The report also indicated that many K-14 local educational agencies (LEAs) failed to properly report payments received from the RDAs and thus contributed to the state's backfill obligation.

Any projected shortfalls for revenue limit offset will require repayment by the LEA for underreporting of AB 1290 payments, retroactive from 2003-04 through 2007-08.

In discussions with both the California Department of Education and the State Controller's Office, the repayment process continues to be deliberated and final repayment recommendations will be forthcoming.

Initially, Senator Negrete McLeod introduced Senate Bill (SB) 360 to provide corrective remedies to address the issues cited in the State Controller's report. SB 360 would have given oversight responsibilities to the auditor/controller of each county, in lieu of the RDA, to allocate AB 1290 payments to affected taxing agencies. However, the Governor vetoed SB 360 on September 27, 2008.

AB 1389, signed by the Governor on September 30, 2008, adds section 33684 to the Health and Safety Code which sets forth a new process for redevelopment agencies (RDAs), counties and the State to report and document AB 1290 payments made to all affected taxing entities. In an effort to correct computation errors iden-

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tified in the state controller's report, the assembly budget committee introduced **AB 1389** to calculate the amount that each RDA failed to pay to the taxing entities (such as school districts, county offices of education or community college districts) within each project area between 2003 and 2008. A key component of this bill is that by November 1, 2008, each RDA was required to report to its county auditor/controller the amounts it was obligated by statute to pay to each taxing entity and the amounts actually disbursed. The bill also requires the redevelopment agencies to pay any shortfall to the taxing entities.

Redevelopment agencies are governed by provisions in the California constitution and the Health and Safety Code (HSC). RDAs may be created by city or county governments, and the legislative body for most RDAs is the city council or the county board of supervisors. Most of an RDA's powers are limited to the boundaries of a redevelopment project area (project). A single RDA may have multiple project areas. City projects must be entirely within city boundaries, and county projects must include incorporated areas only. All projects may include non-contiguous sub-areas and may be expanded by subsequent amendment of the project's redevelopment plan.

Assembly Bill 1389

Assembly Bill (AB) 1389, Chapter 751 of 2008, in part, adds Section 33684 to the Health and Safety Code (HSC). AB 1389 requires that on or before November 1, 2008, each redevelopment agency that is subject to the requirements of HSC sections 33607.5 and 33607.7 shall submit a report of its AB 1290 pass-through obligations.

The following describes which redevelopment project areas for AB 1290 payments are subject to pass-through obligations under AB 1389:

- Adopted on or after January 1, 1994, or
- Adopted prior to January 1, 1994, but amended to include new territory and contains the provisions of Section 33670, or
- Adopted prior to January 1, 1994, but amended to either extend the time limits on the life of the plan or for incurring new indebtedness, or to increase the tax increment limit cap.

AB 1290 amended Education Code 42238(h) (6) to provide for revenue limit offset for AB 1290 payments received pursuant to HSC 33607.5 and 33607.7. For purposes of the revenue limit computation, HSC 33607.5(a)(4)(A)-(D) specifically states the percentage of AB 1290 entitlements to school districts, county offices of education and community college districts that shall be considered property taxes, and the percentage that shall *not* be considered property taxes and thus shall be available for educational facilities.

AB 1389 does not create new AB 1290 reporting requirements for local educational agencies (LEAs). In particular, AB 1389 does not change the obligation of K-12 school districts, county offices of education and community college districts to ensure that the revenue limit offset portion of AB 1290 payments is reported on Form J-29 or on Form CCFS-311 for community college districts.

However, the new reporting process does affect LEAs by requiring the following:

- *RDA*s are to determine the portion of AB 1290 payments that *should* have been reported by each LEA for revenue limit (revenue level) offset, as part of the RDA’s report to be submitted by Nov. 1, 2008 to the county auditor/controller and each LEA.
- The *California Department of Education (CDE)* is to determine the portion of AB 1290 payments the CDE received and that was *actually* reported by each LEA for revenue limit offset purposes, and notify school districts and county offices of education by April 1, 2009 of “apportionment significant audit exceptions or underreported payments” by each LEA.

According to AB 1389, if an RDA has **unpaid** outstanding obligations as of November 1, 2008, payments made against those outstanding obligations to LEAs after this date are to be distributed as follows:

LEA	Health & Safety Code	Education Code	% Property Tax	% Non Property Tax or payment to LEA
School District	33607.5(a)(4)(A)	42238 (h)(6)	43.3%	56.7%
County Office of Education\Special Education	33607.5(a)(4)(C)(D)	2558 (c)	19%	81%
Community College District	33607.5(a)(4)(B)	84751(d)	47.5%	52.5%

The RDA will submit the report to the county auditor’s office and to each affected taxing entity, including school districts, county offices of education and community college districts. Because of the state budget impasse and the late signing of AB 1389, it was not possible for RDAs to comply with the original deadline of October 1, 2008, so RDAs were given until November 1, 2008 to submit the report to the county auditor/controller. The state controller’s office has prepared a standard report format for all RDAs to use and posted it on their Web site at <http://sco.ca.gov/ard/local/ab1389/index.shtml>.

The state controller’s office has created new forms to be used in the reporting process set forth in HSC 33684. On these new forms RDAs will determine the amount of AB 1290 payments RDAs reported and the amounts that:

- Should have been paid to each affected taxing entity (including each LEA) from each RDA project area in each fiscal year.
- Were actually paid to each affected taxing entity (including each LEA) from each RDA project area in each fiscal year.
- Should have been reported by LEAs for revenue limit (revenue level) offset purposes.

Legal Requirements

Section 33684(e) of the Health and Safety Code requires all county auditors to either concur with the report submitted by the RDA or return the report and identify the components the county auditor does not concur with or considers incomplete.

Section 33684(i) further states that if after February 1, 2009 an RDA does not have a statement of concurrence from the county auditor, or has not yet fully paid all outstanding pass-through obligations, numerous sanctions will be in effect against the agency. These include, but are not limited to, the following:

- No new project areas may be added, nor may existing project areas be expanded.
- The agency is prohibited from issuing new debt.
- The agency is limited to expending in the current fiscal year no more than 75% of the average monthly cost of administrative expenditures for the previous fiscal year.

Moreover, the state controller's office forms implicitly assume that AB 1290 payments are received *in the same year for which they are due*; however, this may be incorrect in many cases. Payments to LEAs can often be six months to one year in arrears. Instructions for the state controller's office forms indicate that RDAs should report AB 1290 payment amounts paid *in* a given fiscal year, as long as the payments were made for fiscal years 2003-04 and 2007-08. LEAs will need to separately review and tabulate payments on the basis of each fiscal year, which may differ in some cases from the amount reported by the RDA.

LEAs Underreporting of AB 1290 Payments and Repayments

In accordance with HSC 33684(h)(1)-(3), the CDE will calculate for each school district and county office of education the amount of AB 1290 payments that each LEA:

- Should have reported for revenue limit (revenue level) offset per state controller's office findings

- Actually reported for revenue limit (revenue level) offset
- The amount each LEA still owes for revenue limit offset by April 1, 2009

The CDE will notify each school district and county office of education by April 1, 2009 regarding any shortfalls in the revenue limit offset portion of AB 1290 payments received in fiscal years 2003-04 through 2007-08 (based on a comparison of the state controller's office offset amounts with amounts actually reported by LEAs) and the resulting impact on apportionments, if any.

The projected shortfalls for revenue limit offset shall be deemed to be apportionment significant audit exceptions and will require repayment by the LEA for any underreporting of AB 1290 payments, retroactive from 2003-04 through 2007-08. In discussions with both the California Department of Education and the State Controller's Office, the repayment process continues to be deliberated and final repayment recommendations will be forthcoming.

Similarly, in accordance with HSC 33684(h)(4)-(7), the California Community College System Office (CCCCSO) will notify each community college district by March 1, 2009 regarding any shortfalls in the revenue level offset portion of AB 1290 payments received in fiscal years 2003-04 through 2007-08 (based on a comparison of the state controller's office offset amounts with amounts actually reported by LEAs) and the "resulting impact on apportionments." However, "a community college district may submit documentation to the CCCCCSO showing that all or part of the apparent shortfall for revenue level offset was previously reported to the [CCC]. Upon acceptance of the documentation, the CCC shall adjust the [revenue level shortfall] amounts previously calculated."

FCMAT has attached a summary table of AB 1389 and the reporting process for prior year AB 1290 payments.

Additional assistance

For additional assistance, LEAs should contact their respective oversight agencies or visit FCMAT's Web site at www.fcmat.org and submit an online request for assistance.

This fiscal alert was co-authored by FCMAT staff and Public Economics, Inc.

Public Economics, Inc. ("PEI") is a professional consulting firm located in Orange, California. Specializing in public finance, urban economics, and development services, PEI provides consulting assistance to local school districts, community college districts, county offices of education, and other public and private clients throughout California.

EXHIBIT A
AB 1389: Summary of New Six Step RDA Reporting Process for
Prior Year AB 1290 Payments

<u>New Code Section</u>	<u>New Reporting Requirement</u>	<u>New Deadline</u>
1. HSC 33684(b)	1. Each RDA shall “submit a report to the county auditor and to each affected taxing entity” identifying the amount of AB 1290 payments the RDA believes it should have paid from each RDA project area (“Project”) for each affected taxing entity for FYs 2003-04 through 2007-08	1. Oct. 1, 2008 Deadline subsequently extended to Nov. 1 by SCO
2. HSC 33684(e)(1)-(2)	2. Each County Auditor-Controller (“A-C”) shall “review each [RDA’s] reports . . . <i>and any other relevant information</i> [emphasis added] to determine whether the county auditor concurs with the information included in the [RDA] reports”	2. Nov. 15, 2008 Deadline subsequently extended by SCO
3. HSC 33684(e)(2)-(3)	3. Each RDA may “submit a statement of dispute” if the RDA disagrees with a finding of non-concurrence by the County A-C	3. Nov. 30, 2008 Deadline subsequently extended by SCO
4. HSC 33684(f)	4. Each County A-C shall submit a report to the State Controller’s Office (“SCO”) regarding each RDA report submitted per no. 1 above, including lists of RDAs: <ul style="list-style-type: none"> ◆ For which the County A-C has not issued findings of concurrence ◆ Have not paid all AB 1290 payments the County A-C believes were owed ◆ Have unresolved statements of dispute (along with the County A-C’s analyses supporting findings of non-concurrence) 	4. Dec. 15, 2008 Deadline subsequently extended to Dec. 31 by SCO (and annually thereafter through 2014)
5. HSC 33684(g)	5. SCO shall submit a report to the Legislative Analyst’s Office (“LAO,”), State Department of Finance (“DOF”), California Department of Education (“CDE”), and the Board of Governors of the California Community Colleges (“CCC”), summarizing by individual LEA, Project, and year, the amount of AB 1290 payments SCO has determined each LEA: <ul style="list-style-type: none"> ◆ Was entitled to receive ◆ Actually received ◆ Should have reported for revenue limit (revenue level) offset SCO report shall also include summary of non-concurrence by County A-Cs, statements of dispute by RDAs, the status of RDA disputes, and whether SCO has provided instructions regarding how such	5. Feb. 1, 2009 (and annually thereafter through 2015)

	disputes should be resolved.	
<p>6. HSC 33684(h)(1)-(3) for school districts and county superintendent</p> <p>HSC 33684(h)(4)-(7) for community college districts</p>	<p>6. CDE (CCC) shall calculate for each school district and county office of education (community college district) the amount of AB 1290 payments CDE (CCC) has determined that each LEA:</p> <ul style="list-style-type: none"> ◆ Should have reported for revenue limit (revenue level) offset per SCO ◆ Actually reported for revenue limit (revenue level) offset ◆ Still owes for revenue limit (revenue level) offset <p>CDE shall “notify each school district and county superintendent of schools” regarding any shortfalls in the revenue limit offset portion of AB 1290 payments received in FYs 2003-04 through 2007-08 (based on comparing SCO offset amounts with amounts actually reported by LEAs), and the “resulting impact on apportionments.” <i>The apparent shortfalls for revenue limit offset “shall be deemed to be apportionment significant audit exceptions [with] the date of receipt . . . deemed to be the date of receipt of the final audit report that includes those audit exceptions.”</i></p> <p>Similarly:</p> <p>CCC shall notify each community college district regarding any shortfalls in the revenue level offset portion of AB 1290 payments received in FYs 2003-04 through 2007-08 (based on comparing SCO offset amounts with amounts actually reported by LEAs), and the “resulting impact on apportionments.” <i>However, “a community college district may submit documentation to the [CCC] showing that all or part of the [apparent shortfall for revenue level offset] was previously reported to the [CCC]. Upon acceptance of the documentation, the [CCC] shall adjust the [revenue level shortfall] amounts previously calculated.”</i></p>	<p>6. Apr. 1, 2009 for CDE</p> <p>Mar. 1, 2009 for community college districts</p> <p>(and annually thereafter until 2015)</p>